

LOCAL LAW NO. 1 OF 2025
VILLAGE OF FONDA, COUNTY OF MONTGOMERY, STATE OF NEW YORK

A Local Law Providing for the Defense and Indemnification of Village Officers and Employees

§ 1. Legislative Intent and Purpose.

The Board of Trustees recognizes that Village officers and employees, while acting within the scope of their public duties, face potential personal exposure to civil, administrative, and even criminal proceedings. To promote the recruitment and retention of qualified individuals and to ensure that those serving the public may perform their duties without fear of personal financial loss, this Local Law:

Confers upon all officers and employees the full benefits of Public Officers Law § 18; and

Provides supplemental defense and indemnification consistent with New York State Attorney General Opinions 88-6 and 2003-16 and Comptroller Opinion 2000-1, filling coverage gaps left by the Village's Municipal Public Officials (MPO) policy, including limited reimbursement for successful criminal defense when the acts occurred within the scope of duty and were performed in good faith.

§ 2. Definitions.

- A. **Employee.** Includes any person holding an office, position, or employment by election, appointment, or hire in the service of the Village, whether compensated or not, including members of boards, commissions, and volunteers expressly authorized to act on behalf of the Village.
- B. **Village.** The Incorporated Village of Fonda.
- C. **Governing Body.** The Village Board of Trustees.
- D. **Intentional Wrongdoing or Criminal Conduct.** Means an act or omission undertaken with knowledge that it was unlawful or with the deliberate intent to cause harm, to violate the rights of another, or to obtain an improper personal benefit. This includes conduct resulting in conviction of a criminal offense or any act determined by a court or administrative body to have been willful, malicious, or fraudulent in nature.
- E. **Recklessness.** Means conscious disregard of a substantial and unjustifiable risk that harm or damage will result from one's conduct. Recklessness involves gross deviation from the standard of care that a reasonable person would observe in the same situation and reflects indifference to the consequences of one's actions, rather than mere negligence or error in judgment.

§ 3. Adoption of Public Officers Law § 18.

The full benefits of § 18 of the Public Officers Law are hereby conferred upon all officers and employees of the Village of Fonda. The Village shall be liable for all costs incurred thereunder and shall supplement such benefits as provided in this Local Law.

§ 4. Supplemental Indemnification Beyond MPO Coverage.

A. When the MPO policy does not apply because the matter is not a “Claim” seeking “Damages” for an “Error or Omission,” the Village shall nevertheless provide for defense and indemnification to the extent permitted by law for acts or omissions occurring within the scope of public employment and performed in good faith.

B. This protection includes:

Defense of civil-rights actions under 42 U.S.C. §§ 1981 and 1983;

Defense of administrative, disciplinary, or investigative proceedings arising out of public duties;

Payment of reasonable legal costs in actions seeking injunctive or equitable relief related to official conduct;

Reimbursement of legal expenses for any employee who is acquitted or has charges dismissed in a criminal proceeding arising from acts within the scope of employment and performed in good faith (Attorney General Opinions 88-6 and 2003-16); and

Representation or reimbursement of employees who are subpoenaed or compelled to testify before a grand jury or investigative body solely because of their public employment, provided they were not targets of investigation (Comptroller Opinion 2000-1).

§ 5. Duty to Defend.

A. Upon compliance with the notice requirements in § 8, the Village shall provide for the defense of any employee in any civil, administrative, or criminal proceeding described above.

B. The Village Attorney shall represent the employee, unless a conflict of interest exists, in which case private counsel may be retained with the Village's approval and at reasonable cost.

C. The Village may require multiple similarly situated employees to share counsel.

§ 6. Duty to Indemnify and Save Harmless.

A. The Village shall indemnify and save harmless any employee from any judgment, settlement, or award arising out of acts within the scope of employment and committed in good faith.

B. This includes indemnification for reasonable attorney's fees, costs, or damages, including punitive or exemplary damages, only when the conduct was performed in good faith and without willful or malicious intent.

C. Indemnification shall not apply to:

- Intentional wrongdoing or criminal conduct;
- Recklessness; or
- Knowing violation of law or policy.
- All settlements subject to indemnification require approval by the Board of Trustees, upon the recommendation of the Village Attorney.

§ 7. Exclusions and Constitutional Compliance.

Nothing in this Local Law shall require indemnification for:

- A. Personal fines or penalties imposed by a court;
- B. Wages or employment-related claims;
- C. Acts of dishonesty, fraud, or malicious conduct; or
- D. Claims for which indemnification is expressly barred by state or federal law.
- E. No payment shall be made on behalf of an employee who is convicted of a criminal charge; such payment would constitute an unconstitutional gift of public funds under Article VIII, Section 1 of the New York State Constitution (Attorney General Opinions 88-6 and 2003-16; Comptroller Opinion 2000-1).
- F. Reimbursement authorized under this law is prospective only and shall apply to acts occurring after its effective date.

§ 8. Conditions.

The duty to defend or indemnify is conditioned upon:

- A. Delivery to the Village Attorney of a written request for defense together with copies of any summons, complaint, or other process within ten (10) days of service; and
- B. The employee's full cooperation in the defense and in any related appeals.

§ 9. Insurance and Funding.

The Village may purchase insurance or act as a self-insurer to fund its obligations under this law. Payments made under this section shall be deemed proper Village expenses.

§ 10. Relation to Other Rights.

The protections provided herein supplement, and are in addition to, any other immunity, right, or indemnification available under state or federal law, collective-bargaining agreement, or insurance policy.

§ 11. Severability.

If any provision of this law is held invalid, such determination shall not affect the remainder of the law.

§ 12. Effective Date.

This law shall take effect immediately upon filing with the Secretary of State and shall apply prospectively to acts occurring on or after that date.

References and Legal Authority

Public Officers Law § 18 (Defense and Indemnification of Officers and Employees of Public Entities).

New York State Constitution, Article VIII, § 1 (Prohibition on Gifts of Public Funds).

Attorney General Opinions 88-6 and 2003-16 (authority to supplement § 18 to include successful criminal defense reimbursement).

Comptroller Opinion 2000-1 (authority to provide legal defense for police officers and employees through local law as additional compensation under Municipal Home Rule Law § 10).

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